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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/087,198	03/01/2002	Daryl Real	5407/1J328-US1	8576

7590 01/18/2005

DARBY & DARBY P.C.
805 Third Avenue
New York, NY 10022

EXAMINER

JAGOE, DONNA A

ART UNIT	PAPER NUMBER
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1614

DATE MAILED: 01/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

10/087,198

Applicant(s)

REAL ET AL.

Examiner

Donna Jagoe

Art Unit

1614

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 19 November 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 6 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☒ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

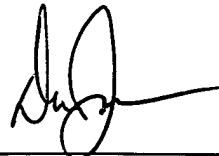
Claim(s) objected to: _____.

Claim(s) rejected: _____.

Claim(s) withdrawn from consideration: _____.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____


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SUPERVISORY PATENT EXAMINER
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Continuation of 2. NOTE: The new scope of the claims raises new issues that would require further search and/or consideration. Further, it does not place the application in condition for allowance. Applicant's representative's arguments seem to be drawn to farrowing rate, when the claims are drawn to "a method for enhancing reproductive performance. There is no mention of a farrowing rate in any of the claims presented. Regarding applicants suggestion that these results are unexpected because of the synergy of the two agents, J. Arthington is cited to provide motivation to employ L-carnitine and chromium picolinate to work synergistically since Arthington teaches that L-carnitine and chromium picolinate work synergistically when fed together to reduce the amount of fat deposition during the protein phase of growth. It does not teach enhancing reproductive performance, however, Arthington teaches that chromium is necessary for optimal insulin function and glucose uptake in cells and L-carnitine aids fatty acid metabolism. Samland et al. (above) teaches that increased insulin secretion has been shown to increase maturation of ovarian follicles and ovulation rate (see abstract). Thus, it would have been obvious to employ synergistic combination of L-carnitine and trivalent chromium to enhance reproductive performance motivated by the teaching of Samland et al. that the synergistic combination of Arthington would increase maturation of ovarian follicles and ovulation rate. It is therefore reasonable to conclude that the strength of correlation between references gives rise to reasonable expectation of success from combining them.

Continuation of 5. does NOT place the application in condition for allowance because: The declaration of Dr. Goodband is noted. Dr. Goodband's arguments are drawn to farrowing rate, when farrowing rate is not claimed ..